

POST-CONVICTION RELIEF – Relief for ineffective assistance of counsel in the form of reinstating a plea offer is only available via a post-conviction relief, and not a pretrial, proceeding. Revised 1/2010

In *State v. Rayes [Reynaga]*, 214 Ariz. 411, 153 P.3d 1040 (2007); vacating *State v. Rayes [Reynaga]*, 213 Ariz. 326, 141 P.3d 806 (App. 2006), the Arizona Supreme Court held that the trial court does not have the authority to order reinstatement of an expired plea offer, during the pretrial stage, upon finding out that defense counsel engaged in excusable neglect by failing to convey the offer to the defendant. Post-conviction relief, and not a pretrial proceeding, is the proper forum to seek such relief. See also *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000). Furthermore, a defendant must establish that defense counsel was ineffective under the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 686 (1984), which provides that a defendant is not entitled to relief unless he establishes both that defense counsel's performance was deficient and that he was prejudiced by the deficient performance. *State v. Rayes [Reynaga]*, 214 Ariz. at 413, 153 P.3d at 1042. The Court ruled that a finding of “excusable neglect”, as opposed to ineffective assistance of counsel, cannot justify reinstatement of a lapsed plea offer. *Id.*